

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Fidelity and Deposit Company of Maryland,
5 Plaintiff

6 v.

7 Big Town Mechanical, LLC; Travelers
8 Casualty and Surety Company of America,
9 Defendants

10
11 ALL OTHER CLAIMS/PARTIES

2:13-cv-00380-JAD-GWF

**Order Granting Motion to Dismiss
Claims against Controlco**

[ECF Nos. 331, 343]

12
13 In this surety-coverage dispute, plaintiff Fidelity and Deposit Company of Maryland
14 brought third-party claims against Controlco. With Controlco's motion for summary judgment
15 on those claims pending,¹ Fidelity and Controlco jointly move to dismiss Fidelity's claims
16 against Controlco and deny Controlco's summary-judgment motion as moot. They also ask me
17 to order that Fidelity may call Controlco's expert Don Koch, P.E., as a witness and introduce his
18 expert reports at trial.²

19 Good cause appearing, the motion to dismiss **[ECF No. 343] is GRANTED**. Fidelity's
20 third-party claims against Controlco are hereby DISMISSED with prejudice, and Controlco's
21 motion for summary judgment **[ECF No. 331] is DENIED** as moot.


22 However, Fidelity has not demonstrated that an order permitting it to call Mr. Koch is
23 necessary or appropriate at this time, or that his expert report (which typically constitutes
24 hearsay) should be admitted at trial. These requests should be brought as a motion in limine after
25 complying with Local Rule 16-3 and its meet-and-confer requirements. So, **to the extent that**

26
27 ¹ ECF No. 331.

28 ² ECF No. 343.

1 **this motion [ECF No. 343] also seeks in limine rulings about the use of Mr. Koch and his**
2 **report, it is DENIED** without prejudice to Fidelity's ability to bring a proper motion in limine.

3 DATED: March 20, 2018.

4 
5 _____
6 U.S. District Judge Jennifer A. Dorsey
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28